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FISCAL IMPACT REPORT

SPONSOR: Foley DATE TYPED: 2/4/03 HB 57

SHORT TITLE: Prima Facie Torts SB _____

ANALYST: Chavez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
NFI	NFI		See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Attorney General (AG)
 Administrative Office of the Courts (AOC)
 LFC Files

SUMMARY

Synopsis of Bill

House Bill 57 invalidates the cause of action “prima facie tort” in New Mexico. The act defines a “prima facie tort” as a claim by a plaintiff for damages on the basis that the defendant acted lawfully, but intended to cause the plaintiff harm and succeeded in doing so. It further lists the elements of a prima facie tort. The Act provides for the effective date of July 1, 2003.

Significant Issues

The act does not limit a plaintiff from pursuing another action in tort. Prima facie tort provides relief for acts not covered by traditional tort categories. “The theory underlying prima facie tort is that a party that intends to cause injury to another should be liable for that injury, if the conduct is generally culpable and not justifiable under the circumstances.” Restatement, (Second) of Torts § 870 (1977), as cited in *Schmitz v. Smentowski*, 109 N.M. at 394, 785 P.2d at 734 (1990).

The Act duplicates language contained in the Uniform Jury Instruction 13-1631 which states the definition and elements of a prima facie tort. The only difference is that the Act defines prima facie tort as a claim for damages on the basis that the defendant acted lawfully, but intended to

cause harm, while the language of the jury instruction requires only that the defendant intended to cause harm and succeeded in doing so.

FISCAL IMPLICATIONS

The Act contains no appropriation. The Attorney General (AG) states the adoption of the Act would relieve the State of the cost of claims that would otherwise lie in prima facie tort. The Administrative Office of the Courts (AOC) indicates there will be minimal administrative cost for statewide update, distribution, and documentation of statutory changes.

ADMINISTRATIVE IMPLICATIONS

The AG indicates the potential for reduction of district court dockets proportional to the number of prima facie tort cases. The AOC states that the Act may impact the performance based budgeting measures identified for FY 04, which may result in a need for additional resources.

RELATIONSHIP

There are other bills with respect to tort litigation. Some include SB 71, limiting damages in tort actions and SB 69, limiting tort liability arising from hot air balloon incidents.

TECHNICAL ISSUES

The AG indicates that the elements for a prima facie tort listed in the Act deviate very slightly from the Uniform Jury Instruction 13-1631 (*see* Rule 13-1631 NMRA 2002), and perhaps should conform to it exactly if they are included.

OTHER SUBSTANTIVE ISSUES

The adoption of the Act will render Rule 13-1631 NMRA 2002 moot. The adoption of the Act will also invalidate the holding of the New Mexico Supreme Court in *Schmitz v. Smentowski*, 109 N.M. 386, 785 P. 2d 726 (1990), which recognized prima facie tort as a valid cause of action in New Mexico. Additionally, adoption may encourage plaintiffs to frame damage claims in terms of existing tort categories and their respective elements, instead of as prima facie tort.

It is suggested as an alternative by the AG that instead of invalidating prima facie tort entirely or retaining it unaltered, the Act could revise the elements to make them more stringent, perhaps as modeled on New York's example. The cause of action as it developed in New York added requirements; for example, that special damages be proven, that the complaint not plead any other tortious conduct, that the activity complained of be otherwise lawful and not fit into any other established tort category, and that the activity complained of be motivated by a solely malicious intent. *See Schmitz* at 394. In recent years, New York has retreated somewhat from these requirements, allowing alternative pleadings and expanding the definition of prima facie tort. *Board of Educ. v. Farmingdale Classroom Teachers Ass'n, Local 1889*, 38 N.Y. 2d 397, 406, 343 N.E. 2d 278, 284-85, 380 N.Y.S. 2d 635, 644-45 (1975).